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MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.:

1:20-cv-00988-DAD-BAM

**DECLARATION OF SETH L.
BERMAN IN SUPPORT OF
PLAINTIFF AND
COUNTERDEFENDANTS'
MOTION TO DISMISS
DEFENDANT'S FIRST
AMENDED COUNTERCLAIMS**

Judge: Hon. Dale A. Drozd

Date: November 3, 2020

Time: 9:30 a.m.

Courtroom: Courtroom 5, 7th floor

HYPHY MUSIC, INC.,

Counterclaimant,

v.

YELLOWCAKE, INC.; COLONIZE
MEDIA, INC.; JOSE DAVID
HERNANDEZ; and JESUS CHAVEZ SR,

Counterdefendants.

SETH L. BERMAN, declares as follows:

1. I am a partner in the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP and I am admitted *pro hac vice* in connection with this matter to practice before this Court. (ECF 18). I am counsel of record for Plaintiff Yellowcake, Inc. (“Yellowcake” or “Plaintiff”), Counterdefendant Colonize Media, Inc., (“Colonize”) and Counterdefendant Jose David Hernandez (“Hernandez”), and as such, I have personal knowledge of the facts and circumstances in this matter.

2. This declaration is being submitted in support of Yellowcake, Colonize and Hernandez’s Motion to Dismiss Defendant Hyphy Music, Inc.’s (“Hyphy” or “Defendant/Counterclaimant”) First Amended Counterclaims (ECF 15), numbered 1, 3, 4, 5, 6, and 7, asserted against Yellowcake, Colonize and Hernandez.

3. This declaration is based upon my personal knowledge obtained as attorney for Yellowcake, Colonize and Hernandez, as well as the Exhibits annexed hereto, the accompanying Memorandum of Points and Authorities, and all prior pleadings and proceedings had herein.

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FACTS & EXHIBITS

4. For the sake of brevity and judicial economy, the undersigned restates the Statement of Facts as set forth in Yellowcake, Colonize and Hernandez's accompanying Memorandum of Points and Authorities and incorporates them as if fully set forth herein.

5. Attached hereto as Exhibits are true and correct copies of the documents referenced in the Memorandum of Points and Authorities submitted herewith.

6. Attached hereto as **Exhibit "A"** is a copy of Plaintiff's Complaint, Exhibit, and Jury Demand (ECF 1), filed on July 16, 2020.

7. Attached hereto as **Exhibit "B"** is a copy of Defendant/Counterclaimant's Answer to Plaintiff's Complaint (ECF 6) filed on August 19, 2020.

8. Attached hereto as **Exhibit "C"** is a copy of Defendant/Counterclaimant's Counterclaims, Exhibits, and Jury Demand (ECF 7), filed on August 19, 2020.

9. Attached hereto as **Exhibit "D"** is a copy of Defendant/Counterclaimant's First Amended Counterclaims, Exhibits, and Jury Demand (ECF 15), filed on August 28, 2020.

10. Attached hereto as **Exhibit "E"** is a copy of the United States Copyright Office's public records, showing that Counterdefendant Jesus Chavez Sr.'s assignment of ownership of the sound recordings comprising "Yellowcake's Copyrighted Works" to Yellowcake was recorded with the United States Copyright Office as Document No. V9970D519.

WHEREFORE, the undersigned respectfully requests that this Court grant Plaintiff/Counterdefendant Yellowcake, Colonize and Hernandez's Motion to Dismiss Defendant/Counterclaimant Hyphy's First Amended Counterclaims numbered 1, 3, 4, 5, 6, and 7, together with such other and further relief as this Court deems just and proper.

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

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4 Dated: October 2, 2020

Respectfully submitted,

5 **ABRAMS, FENSTERMAN, FENSTERMAN,**
6 **EISMAN, FORMATO, FERRARA, WOLF &**
7 **CARONE, LLP**

8 By: /s/ Seth L. Berman
9 Seth L. Berman, Esq. (*admitted pro hac vice*)
10 *Attorneys for Plaintiff Yellowcake, Inc., and*
11 *Counterdefendants Colonize Media, Inc., and*
12 *Jose David Hernandez*

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